

SENATE BILL No. 138

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-4-8; IC 6-3.5.

Synopsis: Income tax withholding. Provides that in computing an employee's income tax withholding, an employer may make an allowance for a withholding exemption claimed by an employee only if the employee furnishes the employer with the Social Security number of the individual for whom the employee is claiming the withholding exemption. Provides that an employer shall file a report annually with the department of state revenue (department) that lists the Social Security numbers of individuals for whom the employer's employees claimed withholding exemptions. Provides that the amount of county adjusted gross income tax (CAGIT) revenue, county option income tax (COIT) revenue, or county economic development income (CEDIT) revenue eligible for distribution to a county is based on the amount of the CAGIT revenue, COIT revenue, or CEDIT revenue collected by the department. (Current law provides that the amount of CAGIT revenue, COIT revenue, or CEDIT revenue eligible for distribution to a county is based on the amount of revenue: (1) collected by the department; and (2) reported on an annual or amended return processed by the department.)

Effective: July 1, 2008.

Riegsecker

January 8, 2008, read first time and referred to Committee on Tax and Fiscal Policy.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 138

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3-4-8 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) Except as provided in
3 subsection (d) or (l), every employer making payments of wages
4 subject to tax under this article, regardless of the place where such
5 payment is made, who is required under the provisions of the Internal
6 Revenue Code to withhold, collect, and pay over income tax on wages
7 paid by such employer to such employee, shall, at the time of payment
8 of such wages, deduct and retain therefrom the amount prescribed in
9 withholding instructions issued by the department. The department
10 shall base its withholding instructions on the adjusted gross income tax
11 rate for persons, on the total rates of any income taxes that the taxpayer
12 is subject to under IC 6-3.5, and on the total amount of exclusions the
13 taxpayer is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4).
14 Such employer making payments of any wages:
15 (1) shall be liable to the state of Indiana for the payment of the tax
16 required to be deducted and withheld under this section and shall
17 not be liable to any individual for the amount deducted from the



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individual's wages and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly of the amount of tax which under this article and IC 6-3.5 the employer is required to withhold.

(b) An employer shall pay taxes withheld under subsection (a) during a particular month to the department no later than thirty (30) days after the end of that month. However, in place of monthly reporting periods, the department may permit an employer to report and pay the tax for:

(1) a calendar year reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed ten dollars (\$10);

(2) a six (6) month reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed twenty-five dollars (\$25); or

(3) a three (3) month reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed seventy-five dollars (\$75).

An employer using a reporting period (other than a monthly reporting period) must file the employer's return and pay the tax for a reporting period no later than the last day of the month immediately following the close of the reporting period. If an employer files a combined sales and withholding tax report, the reporting period for the combined report is the shortest period required under this section, section 8.1 of this chapter, or IC 6-2.5-6-1.

(c) For purposes of determining whether an employee is subject to taxation under IC 6-3.5, an employer is entitled to rely on the statement of an employee as to the employee's county of residence as represented by the statement of address in forms claiming exemptions for purposes of withholding, regardless of when the employee supplied the forms. Every employee shall notify the employee's employer within five (5) days after any change in the employee's county of residence.

(d) A county that makes payments of wages subject to tax under this article:

(1) to a precinct election officer (as defined in IC 3-5-2-40.1); and

(2) for the performance of the duties of the precinct election officer imposed by IC 3 that are performed on election day;

is not required, at the time of payment of the wages, to deduct and retain from the wages the amount prescribed in withholding instructions issued by the department.

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(e) Every employer shall, at the time of each payment made by the employer to the department, deliver to the department a return upon the form prescribed by the department showing:

- (1) the total amount of wages paid to the employer's employees;
- (2) the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code;
- (3) the amount of adjusted gross income tax deducted therefrom in accordance with the provisions of this section;
- (4) the amount of income tax, if any, imposed under IC 6-3.5 and deducted therefrom in accordance with this section; and
- (5) any other information the department may require.

Every employer making a declaration of withholding as provided in this section shall furnish the employer's employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the total amount of adjusted gross income tax and the amount of each income tax, if any, imposed under IC 6-3.5, withheld from the employees, on the forms prescribed by the department.

(f) All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under the provisions of this article shall hold the same in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided in this article. Any employer may be required to post a surety bond in the sum the department determines to be appropriate to protect the state with respect to money withheld pursuant to this section.

(g) The provisions of IC 6-8.1 relating to additions to tax in case of delinquency and penalties shall apply to employers subject to the provisions of this section, and for these purposes any amount deducted or required to be deducted and remitted to the department under this section shall be considered to be the tax of the employer, and with respect to such amount the employer shall be considered the taxpayer. In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.

(h) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for the employee's taxable year which begins in such calendar year, and a return made by the employer under subsection (b) shall be accepted by the department as evidence in favor of the employee of the amount

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so deducted from the employee's wages. Where the total amount so deducted exceeds the amount of tax on the employee as computed under this article and IC 6-3.5, the department shall, after examining the return or returns filed by the employee in accordance with this article and IC 6-3.5, refund the amount of the excess deduction. However, under rules promulgated by the department, the excess or any part thereof may be applied to any taxes or other claim due from the taxpayer to the state of Indiana or any subdivision thereof. No refund shall be made to an employee who fails to file the employee's return or returns as required under this article and IC 6-3.5 within two (2) years from the due date of the return or returns. In the event that the excess tax deducted is less than one dollar (\$1), no refund shall be made.

(i) This section shall in no way relieve any taxpayer from the taxpayer's obligation of filing a return or returns at the time required under this article and IC 6-3.5, and, should the amount withheld under the provisions of this section be insufficient to pay the total tax of such taxpayer, such unpaid tax shall be paid at the time prescribed by section 5 of this chapter.

(j) Notwithstanding subsection (b), an employer of a domestic service employee that enters into an agreement with the domestic service employee to withhold federal income tax under Section 3402 of the Internal Revenue Code may withhold Indiana income tax on the domestic service employee's wages on the employer's Indiana individual income tax return in the same manner as allowed by Section 3510 of the Internal Revenue Code.

(k) To the extent allowed by Section 1137 of the Social Security Act, an employer of a domestic service employee may report and remit state unemployment insurance contributions on the employee's wages on the employer's Indiana individual income tax return in the same manner as allowed by Section 3510 of the Internal Revenue Code.

(l) The department shall adopt rules under IC 4-22-2 to exempt an employer from the duty to deduct and remit from the wages of an employee adjusted gross income tax withholding that would otherwise be required under this section whenever:

- (1) an employee has at least one (1) qualifying child, as determined under Section 32 of the Internal Revenue Code;
- (2) the employee is eligible for an earned income tax credit under IC 6-3.1-21;
- (3) the employee elects to receive advance payments of the earned income tax credit under IC 6-3.1-21 from money that would otherwise be withheld from the employee's wages for adjusted gross income taxes; and

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(4) the amount that is not deducted and remitted is distributed to the employee, in accordance with the procedures prescribed by the department, as an advance payment of the earned income tax credit for which the employee is eligible under IC 6-3.1-21.

The rules must establish the procedures and reports required to carry out this subsection.

(m) A person who knowingly fails to remit trust fund money as set forth in this section commits a Class D felony.

(n) As used in this subsection and subsection (o), "withholding exemption" means a reduction in income tax withholding by an employer for an exclusion provided under IC 6-3-1-3.5(a)(3) or IC 6-3-1-3.5(a)(4) that is made in accordance with the withholding instructions issued by the department. An employer who is required to withhold income tax under subsection (a) may make an allowance for a withholding exemption claimed by an employee only if the employee furnishes the employer with the Social Security number of the individual for whom the employee wishes to claim the withholding exemption.

(o) An employer who is required to withhold income tax under subsection (a) shall file a report annually with the department that lists the Social Security numbers of the individuals for whom an employee has claimed a withholding exemption for the calendar year. An employer shall file the report required by this subsection on forms prescribed by the department on or before the last day of the February that follows the calendar year for which the report is made.

SECTION 2. IC 6-3.5-1.1-9, AS AMENDED BY P.L.224-2007, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) Revenue derived from the imposition of the county adjusted gross income tax shall, in the manner prescribed by this section, be distributed to the county that imposed it. The amount to be distributed to a county during an ensuing calendar year equals the amount of county adjusted gross income tax revenue that the department, after reviewing the recommendation of the budget agency, determines has been

~~(1) received from that county for a taxable year ending before the calendar year in which the determination is made, and~~

~~(2) reported on an annual return or amended return processed by the department in the state fiscal year ending before July 1 of the calendar year in which the determination is made;~~

as adjusted (as determined after review of the recommendation of the budget agency) for refunds of county adjusted gross income tax made

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1 ~~in before July 1 of the state fiscal calendar year in which the~~
 2 ~~determination is made.~~

3 (b) Before August 2 of each calendar year, the department, after
 4 reviewing the recommendation of the budget agency, shall certify to the
 5 county auditor of each adopting county the amount determined under
 6 subsection (a) plus the amount of interest in the county's account that
 7 has accrued and has not been included in a certification made in a
 8 preceding year. The amount certified is the county's "certified
 9 distribution" for the immediately succeeding calendar year. The amount
 10 certified shall be adjusted under subsections (c), (d), (e), (f), (g), and
 11 (h). The department shall provide with the certification an informative
 12 summary of the calculations used to determine the certified
 13 distribution. The department shall also certify information concerning
 14 the part of the certified distribution that is attributable to a tax rate
 15 under section 24, 25, or 26 of this chapter. This information must be
 16 certified to the county auditor and to the department of local
 17 government finance not later than September 1 of each calendar year.
 18 The part of the certified distribution that is attributable to a tax rate
 19 under section 24, 25, or 26 of this chapter may be used only as
 20 specified in those provisions.

21 (c) The department shall certify an amount less than the amount
 22 determined under subsection (b) if the department, after reviewing the
 23 recommendation of the budget agency, determines that the reduced
 24 distribution is necessary to offset overpayments made in a calendar
 25 year before the calendar year of the distribution. The department, after
 26 reviewing the recommendation of the budget agency, may reduce the
 27 amount of the certified distribution over several calendar years so that
 28 any overpayments are offset over several years rather than in one (1)
 29 lump sum.

30 (d) The department, after reviewing the recommendation of the
 31 budget agency, shall adjust the certified distribution of a county to
 32 correct for any clerical or mathematical errors made in any previous
 33 certification under this section. The department, after reviewing the
 34 recommendation of the budget agency, may reduce the amount of the
 35 certified distribution over several calendar years so that any adjustment
 36 under this subsection is offset over several years rather than in one (1)
 37 lump sum.

38 (e) The department, after reviewing the recommendation of the
 39 budget agency, shall adjust the certified distribution of a county to
 40 provide the county with the distribution required under section 10(b)
 41 of this chapter.

42 (f) This subsection applies to a county that:

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(1) initially imposes the county adjusted gross income tax; or
 (2) increases the county adjusted income tax rate;
 under this chapter in the same calendar year in which the department makes a certification under this section. The department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to provide for a distribution in the immediately following calendar year and in each calendar year thereafter. The department shall provide for a full transition to certification of distributions as provided in subsection ~~(a)(1)~~ through ~~(a)(2)~~ (a) in the manner provided in subsection (c).

(g) The department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to provide the county with the distribution required under section 3.3 of this chapter beginning not later than the tenth month after the month in which additional revenue from the tax authorized under section 3.3 of this chapter is initially collected.

(h) This subsection applies in the year in which a county initially imposes a tax rate under section 24 of this chapter. Notwithstanding any other provision, the department shall adjust the part of the county's certified distribution that is attributable to the tax rate under section 24 of this chapter to provide for a distribution in the immediately following calendar year equal to the result of:

- (1) the sum of the amounts determined under STEP ONE through STEP FOUR of IC 6-3.5-1.5-1(a) in the year in which the county initially imposes a tax rate under section 24 of this chapter; multiplied by
- (2) two (2).

SECTION 3. IC 6-3.5-6-17, AS AMENDED BY P.L.224-2007, SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. (a) Revenue derived from the imposition of the county option income tax shall, in the manner prescribed by this section, be distributed to the county that imposed it. The amount that is to be distributed to a county during an ensuing calendar year equals the amount of county option income tax revenue that the department, after reviewing the recommendation of the budget agency, determines has been

- ~~(1)~~ received from that county for a taxable year ending in a calendar year preceding the calendar year in which the determination is made, and
- ~~(2) reported on an annual return or amended return processed by the department in the state fiscal year ending before July 1 of the calendar year in which the determination is made;~~

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as adjusted (as determined after review of the recommendation of the budget agency) for refunds of county option income tax made **in before July 1 of the state fiscal calendar year in which the determination is made.**

(b) Before August 2 of each calendar year, the department, after reviewing the recommendation of the budget agency, shall certify to the county auditor of each adopting county the amount determined under subsection (a) plus the amount of interest in the county's account that has accrued and has not been included in a certification made in a preceding year. The amount certified is the county's "certified distribution" for the immediately succeeding calendar year. The amount certified shall be adjusted, as necessary, under subsections (c), (d), (e), and (f). The department shall provide with the certification an informative summary of the calculations used to determine the certified distribution. The department shall also certify information concerning the part of the certified distribution that is attributable to a tax rate under section 30, 31, or 32 of this chapter. This information must be certified to the county auditor and to the department of local government finance not later than September 1 of each calendar year. The part of the certified distribution that is attributable to a tax rate under section 30, 31, or 32 of this chapter may be used only as specified in those provisions.

(c) The department shall certify an amount less than the amount determined under subsection (b) if the department, after reviewing the recommendation of the budget agency, determines that the reduced distribution is necessary to offset overpayments made in a calendar year before the calendar year of the distribution. The department, after reviewing the recommendation of the budget agency, may reduce the amount of the certified distribution over several calendar years so that any overpayments are offset over several years rather than in one (1) lump sum.

(d) The department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to correct for any clerical or mathematical errors made in any previous certification under this section. The department, after reviewing the recommendation of the budget agency, may reduce the amount of the certified distribution over several calendar years so that any adjustment under this subsection is offset over several years rather than in one (1) lump sum.

(e) This subsection applies to a county that:

- (1) initially imposed the county option income tax; or
- (2) increases the county option income tax rate;

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under this chapter in the same calendar year in which the department makes a certification under this section. The department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to provide for a distribution in the immediately following calendar year and in each calendar year thereafter. The department shall provide for a full transition to certification of distributions as provided in subsection ~~(a)(1) through (a)(2)~~ (a) in the manner provided in subsection (c).

(f) This subsection applies in the year a county initially imposes a tax rate under section 30 of this chapter. Notwithstanding any other provision, the department shall adjust the part of the county's certified distribution that is attributable to the tax rate under section 30 of this chapter to provide for a distribution in the immediately following calendar year equal to the result of:

(1) the sum of the amounts determined under STEP ONE through STEP FOUR of IC 6-3.5-1.5-1(a) in the year in which the county initially imposes a tax rate under section 30 of this chapter; multiplied by

(2) the following:

(A) In a county containing a consolidated city, one and five-tenths (1.5).

(B) In a county other than a county containing a consolidated city, two (2).

(g) One-twelfth (1/12) of each adopting county's certified distribution for a calendar year shall be distributed from its account established under section 16 of this chapter to the appropriate county treasurer on the first day of each month of that calendar year.

(h) Upon receipt, each monthly payment of a county's certified distribution shall be allocated among, distributed to, and used by the civil taxing units of the county as provided in sections 18 and 19 of this chapter.

(i) All distributions from an account established under section 16 of this chapter shall be made by warrants issued by the auditor of state to the treasurer of state ordering the appropriate payments.

SECTION 4. IC 6-3.5-7-11, AS AMENDED BY P.L.207-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) Revenue derived from the imposition of the county economic development income tax shall, in the manner prescribed by this section, be distributed to the county that imposed it.

(b) Before August 2 of each calendar year, the department, after reviewing the recommendation of the budget agency, shall certify to the county auditor of each adopting county the sum of the amount of

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1 county economic development income tax revenue that the department
2 determines has been

3 ~~(1) received from that county for a taxable year ending before the~~
4 ~~calendar year in which the determination is made, and~~
5 ~~(2) reported on an annual return or amended return processed by~~
6 ~~the department in the state fiscal year ending before July 1 of the~~
7 ~~calendar year in which the determination is made;~~

8 as adjusted (as determined after review of the recommendation of the
9 budget agency) for refunds of county economic development income
10 tax made **in before July 1 of the state fiscal calendar year in which**
11 **the determination is made** plus the amount of interest in the county's
12 account that has been accrued and has not been included in a
13 certification made in a preceding year. The amount certified is the
14 county's certified distribution, which shall be distributed on the dates
15 specified in section 16 of this chapter for the following calendar year.
16 The amount certified shall be adjusted under subsections (c), (d), (e),
17 (f), and (g). The department shall provide with the certification an
18 informative summary of the calculations used to determine the certified
19 distribution.

20 (c) The department shall certify an amount less than the amount
21 determined under subsection (b) if the department, after reviewing the
22 recommendation of the budget agency, determines that the reduced
23 distribution is necessary to offset overpayments made in a calendar
24 year before the calendar year of the distribution. The department, after
25 reviewing the recommendation of the budget agency, may reduce the
26 amount of the certified distribution over several calendar years so that
27 any overpayments are offset over several years rather than in one (1)
28 lump sum.

29 (d) After reviewing the recommendation of the budget agency, the
30 department shall adjust the certified distribution of a county to correct
31 for any clerical or mathematical errors made in any previous
32 certification under this section. The department, after reviewing the
33 recommendation of the budget agency, may reduce the amount of the
34 certified distribution over several calendar years so that any adjustment
35 under this subsection is offset over several years rather than in one (1)
36 lump sum.

37 (e) The department, after reviewing the recommendation of the
38 budget agency, shall adjust the certified distribution of a county to
39 provide the county with the distribution required under section 16(b)
40 of this chapter.

41 (f) The department, after reviewing the recommendation of the
42 budget agency, shall adjust the certified distribution of a county to

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provide the county with the amount of any tax increase imposed under section 25 or 26 of this chapter to provide additional homestead credits as provided in those provisions.

(g) This subsection applies to a county that:

(1) initially imposed the county economic development income tax; or

(2) increases the county economic development income rate; under this chapter in the same calendar year in which the department makes a certification under this section. The department, after reviewing the recommendation of the budget agency, shall adjust the certified distribution of a county to provide for a distribution in the immediately following calendar year and in each calendar year thereafter. The department shall provide for a full transition to certification of distributions as provided in subsection ~~(b)(1)~~ through ~~(b)(2)~~ **(b)** in the manner provided in subsection (c).

SECTION 5. [EFFECTIVE JULY 1, 2008] **(a) IC 6-3.5-1.1-9(a), as amended by this act, applies to the entire balance of county adjusted gross income tax revenue accumulated in a special account established under IC 6-3.5-1.1-8. In particular, IC 6-3.5-1.1-9(a), as amended by this act, applies to county adjusted gross income tax revenue that the department of state revenue, after reviewing the recommendation of the budget agency, determines:**

(1) has been received from a county for any taxable year ending before January 1, 2007; and

(2) has not been distributed to the county.

(b) IC 6-3.5-6-17(a), as amended by this act, applies to the entire balance of county option income tax revenue accumulated in a special account established under IC 6-3.5-6-16. In particular, IC 6-3.5-6-17(a), as amended by this act, applies to county option income tax revenue that the department of state revenue, after reviewing the recommendation of the budget agency, determines:

(1) has been received from a county for any taxable year ending before January 1, 2007; and

(2) has not been distributed to the county.

(c) IC 6-3.5-7-11(b), as amended by this act, applies to the entire balance of county economic development income tax revenue accumulated in a special account established under IC 6-3.5-7-10. In particular, IC 6-3.5-7-11(b), as amended by this act, applies to county economic development income tax revenue that the department of state revenue, after reviewing the recommendation of the budget agency, determines:

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- 1 (1) has been received from a county for any taxable year
- 2 ending before January 1, 2007; and
- 3 (2) has not been distributed to the county.
- 4 (d) This SECTION expires January 1, 2009.

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